IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1414 of 2006
In
SPECIAL CIVIL APPLICATION No. 9171 of 2000
with
CIVIL APPLICATION No.12846 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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FATMABEN ISMAILBHAI - Appellant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Appellant(s) : 1,

MR APURVA DAVE Assistant Government Pleader for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. Admitted.

2. Looking to the facts and circumstances of the case, the matter is taken up for final hearing today.

3. The appellant – original petitioner has filed this Letters Patent Appeal under Clause-15 of the Letters Patent challenging the order passed by the learned Single Judge on 17.8.2004 in Special Civil Application No.9171 of 2000 and while accepting that the appellant is entitled to pension he has rejected the claim of the appellant with regard to interest on the pension.

4. Mr.I.S.Supehia, learned advocate appearing for the appellant has submitted that the appellant was appointed as rojamdar in 1960. She was taken as workcharged labourer from 16.1.1987. She retired on 30.11.1993 on superannuation. By her letter dated 28.6.1994 she requested for pension. After various correspondence she was informed that she is not entitled to pension. The appellant has, therefore, filed Special Civil Application No.9171 of 2000 before this Court. The learned Single Judge has allowed the petition so far as the entitlement of pension is concerned, but the interest on the amount of pension is denied, hence present Appeal is filed.

5. Mr.Supehia has placed before this Court various judgments of this Court, wherein discretion was exercised to grant interest on the pension amount. He has further submitted

that though the learned Single Judge has observed in the judgment that under the relevant rules the appellant is not entitled to make claim of the interest, this Court in the case of **Tribhovanbhai Jerambhai Vs. Dy. Executive Engineer, Sub-Division, R & B Deptt, & Anr, reported in 1998(2) GLH**, has taken the view that the Rule-230 of Bombay Civil Services Rules, 1959 itself envisages that a person may be otherwise eligible to pension if so provided by or under the rules. Under Rule-248 the Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension. Mr.Supehia has submitted that even rules are prescribed to grant the benefit of pension. He has, therefore, submitted that the interest is to be granted on the amount of pension. We have also gone through the judgment of Division Bench in the case of **Chhaganbhai Ranchhodbhai Rathod Vs. Dy.**

Executive Engineer, rendered on 6.8.1998 in LPA No.1495 of 1997, wherein the respondents were directed to calculate pensionary benefits within two months and thereafter to pay the amount due to the appellant within one month after completing calculation. The Court has also made it clear that if the amount is not paid as directed, the respondents shall pay the said amount to the appellant with 12% interest thereon from the date of expiry of one month of making calculation till the actual payment is made.

6. Looking to the facts of the present case, the learned Single Judge has decided the petition on 17.8.2004 and directed to make the pensionary benefit to the petitioner. The amount of Rs.2,57,696/- was paid to the petitioner on 7.10.2005. No time was prescribed in the order for payment of pension. Following the aforesaid judgment of Division Bench, we are of the view that the

respondent authorities ought to have made the payment of pension within two months from the date of order of the learned Single Judge. However, the said payment was not made till 7.10.2005. The appellant is therefore entitled to get the interest at the rate of 12% for the period of 12 months on Rs.2,57,696/-, which was paid to the appellant on 7.10.2005. The respondent authorities are, therefore, directed to make the payment of interest at the rate of 12% for the period of 12 months on Rs.2,57,696/- within one month from the date of receipt of writ from this Court or from the date of receipt of certified copy of this order, which ever is earlier.

7. Subject to the aforesaid directions and observations, this Appeal is accordingly allowed to the above extent.

8. In view of the order passed in Letters

Patent Appeal, no order in Civil Application, hence it is accordingly disposed off.

Direct service is permitted.

(A. M. KAPADIA, J.) (K. A. PUJ, J.)

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